

**Local 3, International Brotherhood of Electrical Workers, AFL-CIO and Hunts Point Electrical Wiring Service, Inc. Cases 2-CC-1800, 2-CC-1800-2, and 2-CP-764**

11 September 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

On 20 April 1984 Administrative Law Judge Harold B. Lawrence issued the attached decision. The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In concluding that Local 3 engaged in unlawful secondary activity, the judge relied in part on its "'proclivity' to commit the types of violations alleged to have been committed" in this case. While we agree with the judge that Local 3's past history is a relevant consideration in determining the remedy, we find it unnecessary to rely on prior Board decisions in which Local 3 has been a respondent in deciding whether Local 3 violated the Act as alleged in this instance. The record evidence of Local 3's conduct in the present case is sufficient, standing alone, to establish the violations found by the judge. We note that in *Service Employees Local 73 (Andy Frain, Inc.)*, 239 NLRB 295, 310 (1978), cited by the judge at fn. 13 of his decision, the Board considered the union's proclivity to engage in secondary activity in fashioning the appropriate remedy; the Board did not rely on the union's past conduct in deciding the merits of the case.

**DECISION**

**STATEMENT OF THE CASE**

HAROLD B. LAWRENCE, Administrative Law Judge. These consolidated cases were heard before me on October 4 and 5, 1983, at New York City. The charges were

271 NLRB No. 230

filed by Hunts Point Electrical Wiring Service, Inc. (Hunts Point) in Case 2-CC-1800 on June 2 and in Cases 2-CP-764 and 2-CC-1800-2 on June 6, 1983. An order of consolidation and a consolidated complaint and notice of hearing were issued on June 30, 1983. Violations of Section 8(b)(4)(i), (ii)(B) and (C) of the National Labor Relations Act (the Act) are alleged to have been committed by the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO by reason of picketing of the Lerner Shops headquarters at 460 West 33d Street, New York City, in June 1983. The picketing is alleged to have been conducted with the objectives of forcing Lerner Shops to cease doing business with Hunts Point, forcing Telecom of Downstate New York, Inc. (Telecom) to cease work at Lerner Shops, and forcing Hunts Point to recognize and bargain with Local 3 as the representative of its employees though the Respondent was not certified as their exclusive bargaining representative and though Local 363, International Brotherhood of Teamsters, was so certified and a question concerning representation of the employees could not appropriately be raised at that time. Section 8(b)(7)(A) of the Act is alleged to have been violated because Local 3 engaged in a strike against Telecom from June 1 to June 8 and on June 15 in furtherance of its dispute with Hunts Point.

The Respondent's answers deny all allegations of wrongdoing and statutory violation but concede jurisdiction of the National Labor Relations Board in this case.

The General Counsel contends that the violations of the Act alleged in the complaint are proved by the timing of the picketing and the context in which it occurred (namely, an organizational campaign and filing of a representation petition by Local 3), including the past history of Local 3.

The Respondent asserts that the sole object of the picketing was preservation of area standards.

The parties were afforded full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Posthearing briefs have been filed on behalf of the General Counsel and on behalf of the Respondent.

On the entire record and based on my observation of the demeanor of the witnesses and the manner in which they gave their testimony, and after consideration of the briefs submitted, I make the following

**FINDINGS OF FACT**

**1. JURISDICTION**

There is no issue as to the Board's jurisdiction, the Respondent's answers having admitted the allegations pertaining thereto. I find that Hunts Point is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 3 and Local 363 are labor organizations within the meaning of Section 2(5) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Basic Facts*<sup>1</sup>

On June 1, 1983,<sup>2</sup> Hunts Point and Telecom were engaged in renovation work at the corporate headquarters of Lerner Shops, Inc. at 460 West 33d Street, New York City. Telecom had five employees working on the job. Local 3 had collective-bargaining agreements with the New York Electrical Contractors Association and the Association of Electrical Contractors which were due to expire on June 30. Local 363 had an agreement (also due to expire in June) with the United Construction Contractors Association, Inc., to which Hunts Point belonged. Local 363 represented Hunts Point employees and had been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of employees working for the employer-members of United Construction Contractors Association, Inc. The bargaining unit was defined in the existing collective-bargaining agreement as:

[A]ll electricians, electrical mechanics, helpers and apprentices, excluding office clericals, professional employees, guards and supervisors as defined in the Act.

Though the General Counsel has stressed the failure of Local 3 to investigate the question, un rebutted testimony established that the wages paid by Hunts Point at the time of the events at issue in this proceeding were substantially lower than the wages paid by employers under contract with Local 3 and that this fact was known to responsible officials of Local 3.

On June 1, picket lines were set up at the main entrance to the building on West 33d Street and at a delivery entrance on the 10th Avenue side of the building. Picketing was carried on June 1-3, 6-10, and 14. There was also picketing at Lerner's Nassau Street store on June 15.

On the first day of the picketing, the five Telecom employees working in the building joined the picket line, but the evidence is conflicting as to whether they did so from the inception of the picketing or joined it later in the morning. Their objective in picketing is also in dispute.

Until June 14, the pickets carried signs which read as follows:

## NOTICE TO PUBLIC

Electricians working on this job for Hunts Point Electric do not receive wages and working conditions equal to those established in our contract.

## LOCAL 3 IBEW

This sign is not directed to any other Employer or employee on this job

<sup>1</sup> The facts of the case as set forth in this section are a narrative composite of the undisputed and credited testimony, admissions in the answers, and data contained in the exhibits.

<sup>2</sup> All references to dates herein refer to dates in 1983 unless otherwise stated.

On June 14, they carried signs which stated:

## NOTICE TO PUBLIC

Hunts Pt. Elec. Pays sub standard Wages to its electrical Workers We want all Electrical Workers to be paid decent wages

## LOCAL NO. 3 IBEW

On June 9, Bernard Rosenberg, the business representative of Local 3, sent a letter to Hunts Point as follows:

As you know, you have been picketed at the premises of 460 West 33rd Street, N.Y.C. As it states on the picket signs, the only purpose of this picketing, is to induce you to pay your electricians, working at those premises the prevailing wage rate and the prevailing fringe benefits or their equivalent. As soon as you advise me by letter, mailed telegram or telephone call confirmed by a mailgram, that you are paying those electricians the prevailing rate for those electricians, you then may be assured that there will be no further picketing at those premises.

Hunts Point never replied to this letter.

The decision to institute picketing at the Lerner Shops jobsite was made by Bernard Rosenberg, the business representative of Local 3. Leonard Korman, a foreman who had been distributing authorization cards as part of a citywide campaign by Local 3, had turned in to Rosenberg an authorization card signed by Arthur George, the Hunts Point foreman at the site. George had indicated on the card that he was earning \$10 per hour, a rate substantially below that paid to rank-and-file employees represented by Local 3. Subordinate employees of Hunts Point were obviously making even less.

Korman testified that Rosenberg expressed an interest in knowing how many men were on the job and that he commented, "It sounds like a good place to picket." It does not appear that he gave Korman any explanation of his reasons for thinking so. He directed Korman to set up a picket line immediately and Korman did so.

Approximately 2 months earlier, on April 7, 1983, Local 3 had filed a petition with the Board for certification of representative, alleging that a "substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees." The employers were identified as:

[A]ll electrical contractors bound by the existing agreement between Local Union #363, I.B.T., and United Construction Contractors Association; and all electrical contractors bound by the existing agreement between Local Union #3 I.B.E.W., and N.Y. Electrical Contractors Association, and Association of Electrical Contractors.

Lists of the employees belonging to each association named in the petition were attached. The bargaining unit was defined as inclusive of "all electricians, maintenance mechanics, apprentices and helpers employed [by] above

listed contractors" and excluding "all office clericals and others under the Act."

#### *B. The Respondent's Explanation of the Picketing*

Rosenberg testified that the object of the picket line was to induce Hunts Point to raise its wage rates to the level prevailing locally. The Local 363 contract was due to expire on June 10, 1983. It was felt that if Hunts Point raised its wage rates the news would spread and other Local 363 electricians would negotiate a higher rate. As Local 363's wage rates rose, the bargaining position of Local 3 in its own negotiations would be correspondingly improved.

Rosenberg denied having contacted or made demands on anyone at Hunts Point, Telecom, or Lerner Shops in connection with the picketing.

On cross-examination, Rosenberg testified that he had had the information regarding the wages of Local 363 members for an extensive period of time. Having spoken to Local 363 men during the last 15 years, he knew that they received substantially lower pay than Local 3 people. Rosenberg claimed that the purpose of his campaign was not to try to make all the members of all three associations into Local 3 shops but to raise wages of all electricians in New York by forcing a general election and giving the employees a choice between remaining in Local 363 or coming into Local 3. To me, the distinction is illusory. Rosenberg ultimately conceded that the objective of Local 3 was to secure the right to represent the employees then represented by Local 363 and that if he succeeded the employers of the former Local 363 employees would have to sign a collective-bargaining agreement with Local 3. The General Counsel elicited testimony from him on cross-examination that he was trying to raise the wage rate of journeymen employed by Hunts Point from \$8 per hour to the prevailing wage rate of \$17 per hour; that at the same time an increase to \$19.50 per hour was being negotiated by Rosenberg's union for its own members; and that he was not trying to get the same increase for Local 363 employees. The General Counsel argued, on the basis of this testimony, that since the intention of the witness was a key element in the case the fact that he was not seeking equalization tended to undermine Rosenberg's credibility. I do not believe that it did. Rosenberg's testimony that he believed that a substantial boost in the pay of Hunts Point employees, without equalization, would give Local 3 additional negotiating leverage is plausible.

Korman testified that the reason he reported the presence of Hunts Point on the jobsite to Rosenberg was that he thought Rosenberg should know that they were there because they were paying substandard wages for electrical work. Rosenberg conceded that he never contacted Hunts Point or made any other investigation to verify Korman's report.

I do not view Rosenberg's statement that "this is a good place to picket" as a sinister remark which supports an inference of guilty intention. The statement, by itself, does not reveal why Rosenberg thought the time and place were right for picketing; there is nothing in the remark from which recognitional objectives can be inferred; and the evidence in the record could equally be

deemed to imply that what he had in mind was the availability of manpower from nearby sites and the marked disparity in pay between electricians. I also do not perceive Rosenberg's failure to make an independent investigation following Korman's report as probative of lack of sincerity on the part of the Respondent in asserting area standards picketing. The fact that Local 363 members had a lower pay scale was known for 15 years. Korman's report to Rosenberg merely showed that there had been no change. Further investigation was unnecessary and its pointlessness is confirmed by the failure of Hunts Point to respond either to the picketing or to the Respondent's letter of July 9. No duty to investigate could arise in the absence of any reasonable basis for suspecting that the area standards were not being violated, such as would have existed had Hunts Point denied it was paying substandard wages.<sup>3</sup> The fact that Rosenberg waited so long to begin area standards picketing raises some doubt as to whether that was his sole motive for picketing, but does not by itself prove that the picketing was for any additional purpose or for an altogether different purpose than area standards picketing. I should also mention that I do not share the General Counsel's skepticism toward the argument that both Rosenberg and Korman believed that an attempt to secure recognition of Local 3 by Hunts Point would have been futile because under existing legal precedents any collective-bargaining agreement they negotiated would be nullified. If this was truly their belief, then their denial that the picketing was designed to secure recognition is plausible, especially when picketing for an area standards violation could inure to their indirect benefit.

#### *C. Failure to Disclaim Recognitional or Organizational Objectives*

While the testimony of Rosenberg and Korman has some degree of plausibility, a number of circumstances deprive the Respondent's acts of the shield of innocence which is claimed for them. The very first of these is the failure of the Respondent to issue a timely disclaimer of recognitional or organizational objectives. The contention that the picketing was area standards picketing must rest upon an express disclaimer accompanied by conduct consistent with the disclaimer.<sup>4</sup> Evidence of conduct inconsistent with the declared intent of the picketing will raise an issue as to its true object.<sup>5</sup>

The Respondent commenced picketing without serving any notice on Hunts Point that its picketing was for the purpose of preserving area standards. A notice was served after an unexplained lapse of 9 days. The delay is so substantial that I am compelled to conclude that its service was prompted by a purpose other than notice to Hunts Point of the object of the picketing. It therefore did not constitute an adequate disclaimer.

<sup>3</sup> *Teamsters Local 88 (West Coast Cycle Teamsters)*, 208 NLRB 679 (1974).

<sup>4</sup> *Teamsters Local 296 (Alpha Beta Acme)*, 205 NLRB 462 472 (1973).

<sup>5</sup> *Plumbers Local 741 (Riggs Plumbing)*, 137 NLRB 1125 (1962); *Plumbers Local 129 (Gross Plumbing)*, 244 NLRB 693 (1979).

*D. Evidence of Intent of the Respondent Inconsistent with Its Purported Disclaimer*

Even if the Respondent's delay in communicating with Hunts Point were overlooked, its conduct during the 9-day lapse and thereafter negates the declared object of the picketing. The evidence establishes that the Respondent specifically attempted to organize Hunts Point, and exerted pressure on Lerner Shops and on Telecom by extending the picketing and pulling Telecom employees off the job and by pursuing a longstanding militant work protection policy. Its actions in respect to Lerner Shops and Telecom gave rise to separate charges against it for violation of the Act.

1. Attempt to organize Hunts Point

Organizational and recognitional objectives on the part of Local 3 are demonstrated by its filing of the above-described representation petition. The connection between the petition and the picketing, which the Respondent contends was purely coincidental, is confirmed by the fact that Korman gave authorization cards to Arthur George, the Hunts Point foreman, for execution not only by himself but by other Hunts Point employees as well. The self-evident purpose of an authorization card is to authorize a union to represent the signatory. The fact that hundreds of cards may have been distributed throughout the city does not change their character and consequently does not detract from the effect of the distribution of such cards among employees of Hunts Point at a time when they were known to be represented by Hunts Point. Local 3 was patently trying to organize Hunts Point specifically and apart from its citywide campaign.

There are approximately 10,000 Local 3 electricians, apprentices, or helpers in the construction division. Rosenberg had the Hunts Point agreement in his possession at the time he ordered the picket line to be set up and he knew that the United Construction Contractors Association represented Hunts Point in the collective bargaining. Rosenberg had the list of the members of the association.

Both Rosenberg and Korman testified, that what impressed me as an overly pat presentation, that they did not believe they could legally organize Hunts Point. They asserted that their belief sprang from a legal precedent whereby Local 3 had been precluded from representing employees under a collective-bargaining agreement which it had reached with an employer who was a member of an association which had already negotiated a multiemployer agreement on behalf of its members.

I have no difficulty in crediting the testimony of experienced union officials when they testify that they are cognizant of legal impediments to courses of action they wish to pursue. It does not necessarily follow from that, however, that I must believe a witness who says that, recognizing the legal futility of a course of conduct, he abstained from it, especially when there is evidence to the contrary. Rosenberg conceded that, as a practical matter, the Respondent's attempt to obtain a citywide election would afford Local 363 electricians an opportunity to come into Local 3 and would ultimately place

Local 3 in a bargaining relationship with the United Construction Contractors Association if Local 3 won the election. The fact that a petition was filed is not, by itself, probative of the General Counsel's contention that, in order to organize Hunts Point, approaches were made to Lerner Shops and Telecom; at the same time, the filing of the petition does not, by itself, negate the possibility that Hunts Point was the target of an unlawful demand for recognition. I credit Rosenberg's and Korman's testimony that they knew better, but not the rest of their argument, nor will I speculate on their reasons for doing something they knew they were not supposed to do.

Rosenberg and Korman readily admit that the filing of the petition for an election in a unit of all electricians in the city of New York was not the limit of their efforts to bring them all into one collective-bargaining unit represented by one union, Local 3. Authorization cards were distributed on practically a broadcast basis. They claim it stopped there, but the evidence in the record in this case shows that it did not stop there, but the evidence shows an outright attempt by a Local 3 shop steward to recruit the Hunts Point foreman on the Lerner Shops job as a member of Local 3 and to induce him to bring in the rest of his coworkers employed by that company. According to the testimony of Arthur George, the foreman, these attempts were made by several persons under circumstances which render their actions ambiguous and suspect.

The main effort was made by Leonard Korman, a journeyman electrician and a Local 3 shop steward who was working on a job at 450 West 33d Street, a building which had passages interconnecting with 460 West 33d Street. According to George, Korman solicited him to join Local 3 and he declined because he felt that he had a more promising future with Hunts Point, whose owners had promised him an opportunity to buy into the business when they returned. George had briefly belonged to Local 3 during the summer of 1982 and had been sent out on a job, but he found that he was happier at Hunts Point. He met Korman when the latter, who concerned himself with happenings in both buildings, came through a passage into 460 West 33d Street with a Local 3 union member who has challenging other workmen on the jobsite. When Korman discovered that George had once belonged to Local 3, he told George, "You'll be hearing from me." According to George, Korman thereafter pursued him assiduously though George tried to avoid Korman and other members of Local 3. Nevertheless, later in the day on which he had met Korman, he had a further conversation with Korman, which he described as follows:

I went back to where I had my material and when I walked in there I seen two men in the room and one was writing down the name of my gang box with my company's name. And he says to me, are you a principal in this business and I said no I'm not, I'm the foreman, so he asked me would I like to be interested in going to, you know, Local 3, and I said no I'm not. I said because I have a chance of

taking over this half of this business and I want to stay with it, I am happy where I am and I like it.

In their several conversations, Korman drew comparisons between the wage scales and asked George to fill out a pledge card; asked Korman how many men were in his shop; tried to persuade him to act as a go-between and procure his coworkers' signatures on authorization cards, in return for which Local 3 would see if something could be done for him; and tried to persuade him, when he appeared reluctant, that he would be better off in Local 3, with its benefits, considering that George was a widower with small children. Though George was reluctant to engage in these conversations and told Korman that he did not want to be bothered and that he was happy where he was, Korman kept "hassling" him. As a result, George signed a Local 3 card, assertedly for the sole purpose of getting Korman off his back. George emphasized his attempts to avoid involvement with Korman. For example, he testified that, in addition to his reluctance to talk to Korman, he tried to avoid getting involved with the man who had accompanied Korman on their first encounter but the man caught up with him and invited him to visit Local 3 headquarters. George also told this person that he did not want to be bothered, that he was happy where he was and wanted to stay there. This individual assured him he could take over the business of Hunts Point and still be a member of Local 3. George replied, "And, I had said to him, says it doesn't make any difference, I am happy where I am, I am not going to jeopardize what I can get, so that's the way I left it."

George also had conversations with an insistent Telecom employee named Alex, who said he wanted to try to do something for George and promised to use connections to enable George to get an A card. He also, "[Y]ou help us you bring these guys in that you got working, you know, if you can bring a few with us, you give us a chance he says, the better we can do for you. The more you do for us the better we can do for you." Then, according to George, "[H]e says why don't you take the chance, so I gave him my name, my address and I let it go at that and nothing ever came of it after that." Alex did not testify at the hearing and George's testimony respecting their conversation is not controverted.

George also had conversations with James Larkin, the Telecom foreman, whom he quotes as having said "but you make my job a whole lot easier if you came with us."

The Respondent raised serious questions both with respect to George's veracity and in regard to the actual meaning of the events which he described. Thus, the Respondent argues (and not implausibly) that, even accepting George's own description of the conversations which took place, everybody in the industry understands that had George signed a card for Local 3 the effect would have been simply that he would have left Hunts Point and gone to work for a contractor who had signed with Local 3. In other words, it was not necessarily a step to getting Local 3 into Hunts Point. Furthermore, consider what happened. George testified that both he and his co-worker, Israel Rivera, signed cards with Local 3, but he

never advised Hunts Point that he had done so, and his employer apparently never found out.

Korman's testimony places the exchanges between himself and George in a perspective altogether different from that given by George. Korman emphasized the fact that George, a widower with two small children, was extremely anxious to obtain a rating reclassification which would enable him to earn more money. He pursued that objective vigorously with Korman and visited the Local 3 headquarters. He let Korman know that he had once been a member of Local 3 and took great pains to demonstrate the quality of his work to Korman at the Lerner Shops jobsite, taking him on a tour and showing him the portions of the work that he had done himself. (I found Korman's testimony on this point credible in view of George's own testimony that Korman told him that he could see that George knew how to do his work. This would be an otherwise inexplicable comment.)

Korman testified that electricians are screened at the Local 3 headquarters; his function was simply to give cards out to anyone whom he thought might be interested in signing up with Local 3. He gave George a card to sign, not because he was an employee of Hunts Point, but because he thought George was a good man who had previously been a member of Local 3. Korman insisted that, when Rosenberg sent him out to get cards signed by Local 363 members, he did not single out any employer by name. This was all part of the campaign in support of the petition. George's personal circumstances had provided the impetus for Korman to give him a card. George had quickly made him aware that he was a former member of Local 3, was earning only \$10 an hour, and was in difficult personal circumstances and now wanted an A-rated card. Korman therefore invited him to discuss his prospects with Local 3 officials. The extent of George's anxiety to push the matter is indicated by the fact that he gave Korman three telephone numbers at which he could be reached and listed a telephone number on the card which he signed and suggested that other employees might also be interested. According to Korman, George followed evasive tactics in order to avoid being seen talking to Korman because he was concerned about word getting back to Hunts Point.

The Respondent also attempted to put the conversation with Alex in an innocent light, attempting on cross examination of George to limit the scope of the remarks actually made by Alex. Testimony was elicited from George that "all he said to me was the more people I bring with me the better it is for me . . . . He didn't actually say anything about representing."

Q. He did not say anything about representing Hunts Point?

A. He didn't use that word.

Q. Oh, did he use any words similar to representing?

A. Well, he said if he, the more people I bring in the better it is.

However, immediately thereafter, George made it clear that Alex told him that the more people he brought in the better it was "because then they have more of a

chance" and what they had a chance at was organizing Hunts Point:

Q. He said the more people you bring in the better it is?

A. Yes.

Q. As you understood it did Alex say the more people you bring into Local 3 the better it is?

A. No, from my shop.

Q. Into Local 3?

A. Yes.

Q. Okay.

A. Because then they have more of a chance, was his exact words. That was all he said to me.

While the testimony of George and Korman contains conflicting assessments of the degree of George's anxiety to become affiliated with Local 3, there is nothing basically incompatible between their accounts of Korman's solicitation of George. Korman simply ascribes it to a motivation other than that contended for by the General Counsel. Alex was never brought in to controvert George's version of Alex's remarks, and I therefore take George's version to be accurate.<sup>6</sup> It makes no difference, in any event, whether George was receptive or not to Korman's overtures: the issue is whether Local 3 was trying to organize the employees of Hunts Point, not whether the employees were amenable. George's testimony leaves me convinced that Local 3 was committing the violations alleged.

## 2. Pressure on Lerner; location of picketing

Besides the picket line set up on June 1 on West 33rd Street at the main entrance to the building in which Lerner Shops maintained its headquarters, a picket line was established on the 10th Avenue side of the building. Picketing took place at both places on June 1-3, 6-10, and 14. According to Charles J. Costa, senior vice president of labor relations for Lerner Shops, picketing also occurred in front of Lerner's stores on Nassau Street in downtown New York on June 15. He testified that he did not have personal knowledge of this, but he was at the store on that date and was informed by security personnel that the pickets were in front of the store. The fact that pickets were in front of the store on that date was not controverted by the Respondent.

Frank Bua, director of construction for Lerner Shops, testified that the 10th Avenue side of the building is a

loading dock area with a ramp and double door reserved for the renovation workmen and for truckmen. They are not used by the public and there is no public entrance on that side of the building. Nevertheless, there were pickets in front of that entrance during the first 4 or 5 days of picketing, in addition to the people picketing in front of the building. On cross-examination, Bua modified his testimony, asserting that the double door was not an entrance for the construction workmen working the building but was utilized solely by warehouse personnel who loaded the trucks. In line with the testimony of the security guard stationed in the lobby, Bua then testified that pursuant to instructions from Lerner Shops every contractor working at Lerner Shops headquarters had its own sign-in and sign-out sheet which was signed by its workers as they came into the building through the lobby.

The net effect of Bua's testimony (either version) is that Local 3 was bringing pressure to bear on business concerns which had no interest in Local 3's dealings with Hunts Point. The fact that Local 3 picketed the Nassau Street store of Lerner Shops shows its intention to exert pressure upon Lerner Shops to stop doing business with Hunts Point.

The occurrence of picketing at the additional locations, uptown and downtown, is unrelated to the Respondent's professed objective of educating the public respecting Hunts Point's deviation from area wage standards. It undermines the credibility of the defense by itself and when it is considered together with the involvement of the Telecom employees, who were certainly not needed to maintain informational picketing.

## 3. Pressure on Telecom

The testimony that the Telecom contract was close to expiration, and that Telecom employees picketed with the intention of giving Telecom a "foretaste" of what would happen if a new agreement were not negotiated in time, strikes me as a rather lame excuse for their presence on the picket line in view of their participation on the very first day of the picketing and almost from the very start of the picketing on that day. So far as their participation was concerned, the thinking appeared to have all been done before the picketing started. Credible descriptions of the circumstances in which the picketing was conducted were furnished by Harry Jinad and Frank Bua.

Jinad is a security officer employed by Security Operations Systems, which handles security for the Lerner Shops headquarters premises. Jinad works a shift from 12 midnight to 8:30 a.m. He is stationed in the lobby of the building, the 33rd Street entrance of which consists of a set of double doors and a revolving door built into a glass facade which extends the entire width of the building, giving Jinad an unobstructed view of the sidewalk in front of the building.

Since it is Jinad's responsibility to check the identification of persons entering the building, he came to recognize the Telecom employees, though he did not know their names. They had their own identification cards and he had a list of who they were. They signed in and

<sup>6</sup> Failure to call knowledgeable persons as witnesses gives rise to inference that had they been called their accounts would not have been favorable. *Colorflo Decorator Products*, 228 NLRB 408, 410 (1977), enf'd. mem. 582 F.2d 1289 (9th Cir. 1978). See also *Bechtel Corp.*, 141 NLRB 844, 845, 852 (1963); *Davis Walker Steel & Wire Corp.*, 252 NLRB 311 (1980); *Teamsters Local 959 (Northland Maintenance)*, 248 NLRB 693, 698 (1980).

I draw no adverse inference, however, from the refusal of Rosenberg and Korman, acting on advice of counsel, to take the stand when called upon to do so by the General Counsel during presentation of the General Counsel's direct case. No advance notice was given to the Respondent that such a request would be made and no subpoenas were issued to require the attendance of either witness on the General Counsel's direct case. The matters regarding which their examination was sought were gone into on the defense case and both witnesses testified and were cross-examined with respect thereto. There was no prejudice to the General Counsel's case.

signed out. He issued visitor passes to them. He observed them arrive for work between 7:50 and 8 a.m. on the morning of June 1. They signed in, went upstairs to the fifth floor, and about 8:10 a.m. all five of them came back downstairs and went outside to the front of the lobby, where they were joined in about 5 minutes by someone (whom he did not recognize) who gave each of them a picket sign. They placed the signs around their necks and all six men began pacing back and forth in front of the building. They were still there when he left work at 8:30 a.m. It was Jinad's recollection that picketing went on until June 13.

It was Bua's recollection that the picketing went on for 5 or 6 days after June 1, then stopped, and resumed around June 14. He identified the pickets as Local 3 electricians and testified that throughout the period of the picketing the Telecom employees did not work on the jobsite. He did not think they had initiated the picketing, however, for he recalled that they had worked for some period of time at the beginning of the morning of June 1. At the least, his recollection was that they had been in the building upon his arrival for work around 9 a.m. He met them on their way out. As he emerged from one elevator on the fifth floor they were getting into another to go down. He recognized them as the Telecom people and asked them where they were going. They told him that they had to leave the building. He went down again in the elevator and saw that four of the five Telecom people had joined the picket line. After June 14 they resumed work and did no further picketing.

Bua testified that James Larkin, the Telecom foreman, told him that the Telecom workers were leaving the jobsite on instructions from the pickets outside. When Bua attempted to dissuade him, Larkin, according to Bua, responded:

Frank, you got to realize that we are working for Telecom without a contract . . . after all, we have families, we have wives and children and we can't jeopardize our position with the Union.

While this conversation was going on, the Telecom employees continued their preparations for walking off the job. The remarks are ambiguous with respect to the reason they were leaving, but they indicate that the Telecom employees acted deliberately, concertedly, after due preparation, and under pressure from Local 3.

Larkin also made a revealing statement to Arthur George after the Telecom employees had returned to work following the original picketing that commenced on June 1 and were preparing to go out again, this time unquestionably for their own purposes:

Q. After that picketing began, did you ever have any conversations with Jim Larkin?

A. Yes. After a while when they came back to work I was talking to Larkin in the hallway one afternoon and I says to him I says Jim how are you doing, so he says all right . . . and he says to me he says you know he says I'll be seeing you and put out his hand, so I said Jim what's happening. He said well we are going out again. I says again. I said this is going to start again, he says no this is legiti-

mate he says Telecom doesn't want to sign with us and that's it.

Q. How much after the picketing had first started was this conversation with Larkin?

A. The first like job action picketing?

Q. Yes.

A. Like a week, two weeks in between, you know, around there.

No objection was made to George's testimony respecting Larkin's statements to him and the objection made to Bua's testimony about Larkin's statements pertained mostly to the question of whether Larkin's statements were binding on Local 3. I have considered Larkin's statements along with the other evidence in the case for several reasons. The failure to object in one instance in effect waived any objection that might otherwise have been valid upon its repetition. There were, however, more substantial reasons for accepting it. The first of these is that in similar circumstances the Board has held a foreman's statements to be an admission binding on the union because he was the foreman on the job and was enforcing the union's total job policy.<sup>7</sup> Larkin's statements are binding on Local 3 because, without question, to the extent that any conflict existed, Larkin's responsibilities to Local 3 took precedence over any obligation he felt to Telecom to get the job completed. The analysis of his situation must concern itself not with his relationship to Telecom, but with his relationship to Local 3. It is apparent from his remarks and his actions that he was acting on behalf of Local 3 in attempting to enforce a Local 3 bylaw when the Telecom employees first walked off the job.<sup>8</sup>

The second reason is that, even if we overlook the waiver of the objection and the fact that Larkin, a foreman, was leading the men off the job in pursuance of union policy, the hearsay nature of the testimony is within the exceptions allowed by the Federal Rules of Evidence. Larkin's statements illuminate his and the other Telecom employees' purpose in joining the picket line on June 1. They were made to describe an event in which he was a current participant. They are the strongest evidence available on a material issue of the case, and the interests of justice are served by admitting them into evidence.<sup>9</sup>

It cannot be overlooked that Larkin was not produced and examined on the point by the Respondent, which leads me to infer that had he appeared he would have confirmed the testimony of Bua and George.<sup>10</sup> I have also taken into account the failure of Local 3 to take any

<sup>7</sup> *Electrical Workers IBEW Local 3 (General Dynamics)*, 264 NLRB 705, 710 (1982); *Carpenters Local 1016 (Booher Lumber)*, 117 NLRB 1739, 1744 (1957), enf'd. 273 F.2d 686 (2d Cir. 1960); *Asbestos Workers Local 53 (McCarty & Armstrong)*, 185 NLRB 642, 650 (1970); *Electrical Workers IBEW Local 3 (Western Electric)*, 141 NLRB 888, 893 (1963), enf'd. 339 F.2d 145 (2d Cir. 1964).

<sup>8</sup> See *Carpenters Local 1016 (Booher Lumber)*, supra.

<sup>9</sup> Fed. R. Evid. 803, subdvs. (1) and (24).

<sup>10</sup> See cases cited in fn. 6, supra.

disciplinary action with respect to its members' supposedly unauthorized work stoppage.<sup>11</sup>

#### 4. Local 3 bylaws

Section 12 of article XIII of the Respondent's bylaws underscores the militancy of Local 3.

The Respondent has a long history of violations of the Act similar in nature to the violations charged in the present case, the impetus for which seems to be the "total job policy" enshrined in one of its bylaws which has been in effect for many years, and which provides as follows:

Sec. 12. No member is to give away work coming under the jurisdiction of this Local, or to allow any other tradesmen to do work coming under this Local's jurisdiction.

In *Electrical Workers IBEW Local 3 (Eastern States Electrical)*, supra, the administrative law judge considered the import of this bylaw:<sup>12</sup>

The enforcement by a union of a bylaw which obligates members not to permit their own employers to assign to other tradesmen employed by him work falling within the work jurisdiction claimed by the union would not appear to be in violation of the Act. The bylaw here in issue, however, is so broadly worded as to obligate Local 3 members not to permit any other tradesmen to perform work within their claimed jurisdiction irrespective of the employer for whom such other tradesmen may be working. Obedience to the bylaw in situations such as that here presented therefore necessarily induces and encourages employees to refuse to perform services or to take other proscribed action with an object of forcing or requiring persons to cease doing business with other persons within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

This is not to say that the maintenance of the bylaw is in itself a violation. Rather, it constitutes the inducement and encouragement element of the 8(b)(4) violation which occurs when members, acting in obedience to the bylaw, cease their work for a proscribed object. *Joliet Contractors Association v. N.L.R.B.*, 202 F.2d 606, 612 (C.A. 7, 1953), cert. denied 346 U.S. 824 (1953).

This is closely related to the further argument advanced by the General Counsel to the effect that the evidence in the case should be viewed in the light of the past conduct of Local 3. A respondent's past conduct may have relevance when there are facts which independently tend to establish the commission of the currently alleged violation. The past history of a respondent may not be substituted for proof of violation, but it may

be used to interpret the evidence which tends to establish it.

The Respondent's proclivity to engage in unlawful secondary activity, in support of its frequently asserted claim to telephone interconnect work being performed by Communications Workers of America, has been the subject of frequent comment in cases before the Board.<sup>13</sup> There is no reason to construe the Board's finding, however, as applicable only to cases involving that specific type of work and that particular rival union; it is to the nature of the activity that inquiry must be directed. The secondary activity is the subject of the investigation and the "proclivity" found by the Board is Local 3's tendency to engage in secondary activity to preserve that and related types of work. I have therefore taken into consideration the Respondent's proclivity to commit the types of violations alleged to have been committed in the circumstances of the present case in order to protect the kind of business involved in this case.

#### 5. Statements of purpose made at the time

I have considered the statements made by James Larkin to Bua and George respecting the reasons for the actions of the Telecom employees and the statement made to George by the employee named Alex. The General Counsel also offered the testimony of Doris Vallentin, a bookkeeper in the Lerner Shops office, who testified that on the first day of the picketing she was directed by someone in the office to go downstairs and compare the text of the statements on the picket signs with what was written on a piece of paper which was given to her. She found the text of the signs to be in accordance with the first one which I quoted earlier. She asked one of the pickets what was going on. The picket to whom she spoke was a man whom she had met in the building on the previous day, but she testified that she did not know his name. Her testimony was as follows:

Q. What did he say to you?

A. Well, when he approached me I asked him would he get in trouble for talking to me. He told me no. And, then he was telling me how Local 3 wanted Hunts Point to join their Local.

Vallentin quoted him as saying "that Hunts Point was working for lower wages and they wanted Hunts Point to join Local 3."

Vallentin's testimony as to what she was told by the anonymous picket is entitled to scant weight. A person carrying a picket sign is a representative before the public of the union which has directed the picketing. Inasmuch as Rosenberg and Korman both testified that Rosenberg directed Korman to set up the picket line and that Korman immediately proceeded to do so, the only permissible inference that can be drawn is that a person subsequently seen walking up and down with a picket sign was employed by the Union to do so. Nevertheless, it must be recognized that such a person may not neces-

<sup>11</sup> *Electrical Workers IBEW Local 3 (General Dynamics)*, supra; *Electrical Workers IBEW Local 3 (Eastern States Electrical)*, 205 NLRB 270, 273 (1973); *Electrical Workers IBEW Local 3 (Ericsson Telecommunications)*, 257 NLRB 1358, 1369 (1981).

<sup>12</sup> 205 NLRB at 273. See also *Electrical Workers IBEW Local 3 (Ericsson Telecommunications)*, supra; *Electrical Workers IBEW Local 3 (General Dynamics)*, supra.

<sup>13</sup> See cases involving *Electrical Workers IBEW Local 3* cited in fn. 11. A union's proclivity to engage in secondary activity was also noted in *Service Employees Local 73 (Andy Frain, Inc.)*, 239 NLRB 295, 310 (1978).



sarily appreciate the true objectives of the picketing. I am not inclined to place great weight upon statements made in a brief, hurried conversation by an unidentified picket about whom nothing is known. Vallentin testified that her conversation with him had been very brief because she was anxious to get back upstairs. She professed not to know his name, though she knew him well enough to speak to him on two consecutive days. On the basis of her uncomfortable demeanor while testifying and the vagueness of her testimony, I accord little weight to it. It must be observed, however, that if Vallentin was able to discover the objective of the picketing from one of the pickets, then the Telecom employees marching back and forth with him should have been able to do so as well. We do not have to speculate about this point. None of them testified. The Respondent could easily have arranged for their presence at the hearing. I draw an adverse inference against the Respondent, therefore, that had they testified they would have testified to the effect that they joined the picket line in order to increase the pressure on Lerner Shops and Telecom to cease doing business with or alongside of Hunts Point.<sup>14</sup>

#### 6. Failure of Local 3 to send Telecom employees back to work

I accord great weight to Korman's testimony that he remained silent in the face of picketing by Telecom employees and others. He conceded that he never told either the Telecom workers assigned to 460 West 33rd Street or Telecom workers who joined the picket line from other worksites to go back to work.

Korman, who had to pass the picket line at least once a day, admitted to having observed the picketing on at least seven occasions and to having spoken to the pickets. He insisted in his testimony that he told them that they were on an informational picket line, the purpose of which was to notify the public that Hunts Point was not paying the prevailing wage rate, and that he personally observed that there was no interruption of deliveries into the building. Nevertheless, he conceded that he never told anyone that they should go back to work. He asserted that he simply tried to set an example by telling people who asked him what to do that he personally was going to work and that they were supposed to work and by actually continuing to work on his own job. He attempted to justify his inaction by asserting that he lacked authority to direct anyone to work or not to work, even Local 3 members, and by emphasizing that, though he initially set up the picket line, he was not in charge of the picketing.

Korman's concession that he made no effort to get the Telecom employees to return to work, though he frequently passed the picket line and spoke to the pickets, including the Telecom people, had an air of detachment respecting the entire transaction, though he himself had set up the picket line. It was surprising to hear him testify that in his conversations with the pickets he "learned" that they came from neighboring jobs, on their lunch breaks, before the start of their work shifts, and at different times during the day. He professed to be unable to

explain how that had come about. The detached and self-serving character of his testimony was also apparent in his assertion that a Telecom picket told him they were on the picket line to give Telecom a foretaste of an impending strike if a new Telecom contract was not reached, and his testimony that he told the pickets the purpose was to notify the public that Hunts Point was not paying the prevailing wage rate. His testimony gives the impression that no one was in charge. I do not credit his testimony that he was so completely detached from the events which he had played a large part in initiating.

The overriding fact (by his own admission) is that Korman made no effort to get the Telecom employees back to work and watched in silence as they picketed. His silence and the failure of Local 3 to order the Telecom employees back to work constituted inducement of the picketing by those employees.<sup>15</sup> Korman's conduct illuminates the true motives of the Respondent.<sup>16</sup>

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The violations of the Act herein found to have been committed by the Respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### CONCLUSIONS OF LAW

1. Hunts Point Electrical Wiring Service, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent is not currently certified as the bargaining representative of the employees of Hunts Point Electrical Wiring Service, Inc.

4. Local 363, International Brotherhood of Teamsters is a labor organization within the meaning of Section 2(5) and Section 8(b)(7)(A) of the Act which at all material times has been certified by the National Labor Relations Board as the exclusive representative of certain employees of Hunts Point Electrical Wiring Service, Inc. for collective bargaining purposes, and a question concerning the representation of such employees could not appropriately be raised under Section 9(c) of the Act.

5. The Respondent violated Section 8(b)(4)(ii)(B) and (C) and Section 8(b)(7)(A) of the Act by picketing Hunts Point at its jobsite at the corporate headquarters of Lerner Shops, Inc. at 460 West 33rd Street, New York City, with the object of compelling Hunts Point to enter into collective bargaining with it notwithstanding that Hunts Point had a collective-bargaining agreement with Local 363, the certified collective-bargaining representative of its employees.

<sup>14</sup> See cases cited in fn. 6, supra.

<sup>15</sup> *Longshoremen ILA Local 1694 (Bd. of Harbor Commissioners)*, 137 NLRB 1178, 1187 (1962), modified 331 F.2d 712 (3d Cir. 1964) (in a respect not relevant here).

<sup>16</sup> *Plumbers Local 129 (Gross Plumbing)*, 244 NLRB 693, 702 (1979).

6. The Respondent violated Section 8(b)(4)(i) and (ii)(B) by inducing and encouraging its members employed by Telecom and engaged in work at the Lerner Shops, Inc. headquarters to leave their employment and to cease performing services on the jobsite, and to picket Hunts Point at the Lerner Shops jobsite, and by inducing and encouraging its members employed at other related jobsites to picket Hunts Point at the Lerner Shops jobsite, with the object of forcing Lerner Shops, Inc. to cease doing business with Hunts Point.

7. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

In *Electrical Workers IBEW Local 3 (Ericsson Telecommunications)*, 257 NLRB 1358 (1981), this Respondent was found to have violated Section 8(b)(4)(i) and (ii)(B) of the Act by encouraging its members to refuse to perform services with the object of requiring the company by which they were employed to cease doing business with another company, and was specifically ordered to cease and desist from applying its bylaws in such a manner as to induce or encourage its members to commit these violations. The basis upon which the administrative law judge recommended the issuance of an order to that effect was the "continued reliance of members of Local 3, with the Local's approval, upon the bylaw obligating them not to permit other tradesmen to perform work within the Local's claimed jurisdiction as an inducement to engaging in unlawful secondary boycott activities seeking to protect claims to disputed work."<sup>17</sup>

The pattern of the Respondent's conduct remains unchanged. Accordingly, I will again recommend that the Respondent be ordered to cease and desist from engaging or inducing or encouraging its members to engage in unlawful secondary boycott activities and to restrict the application of its bylaws to legally permissible objectives. In the hope that an increased understanding on the part of the membership of Local 3 respecting the requirements of the law will make it increasingly difficult for the Respondent to commit similar violations in the future, I will recommend that the Respondent be directed to post a notice of this decision in all locations where it is likely to be seen by the Respondent's members.

The testimony in the record which indicates that some of the pickets came from other jobsites and the inevitable uncertainty which attends any effort to gauge the effect of the Respondent's conduct upon employees of other employers involved in or affected by the picketing makes it desirable that, in order to ensure that notice of the Board's remedy reach all interested and potentially affected persons, the dissemination of the notice not be limited to the normal posting at union halls and offices. There is ample precedent when such need exists for publication in newspapers of general circulation and in the Respondent's own publications mailed to its membership.<sup>18</sup> It will be recommended that the notice directed

to be posted also be published in such fashion as to ensure that notice of the decision herein will reach all persons who should be advised.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation<sup>19</sup>

#### ORDER

The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, New York, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing or causing to be picketed, or threatening to picket or to cause to be picketed, Hunts Point Electrical Wiring Service, Inc. at the Lerner Shops, Inc. jobsite at 460 West 33rd Street, New York City, or at any other Lerner Shops, Inc. store or facility, or in the environs thereof, or at any other location at which Hunts Point Electrical Wiring Service, Inc. is engaged in work, at a time when the Respondent is not currently certified as the representative of the employees of Hunts Point Electrical Wiring Service, Inc., where an object thereof is to force or require the Employer to recognize or bargain with the Respondent as the representative of its employees or to force or require the employees of Hunts Point Electrical Wiring Service, Inc. to accept or select the Respondent as their collective-bargaining representative if, and despite the fact that, at such time Hunts Point Electrical Wiring Service, Inc. has lawfully recognized, in accordance with the Act, another labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of the Act.

(b) Inducing or encouraging individuals employed by Telecom of Downstate New York, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, materials, or commodities, or to perform any services, where an object thereof is to force or require Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other employer or person, to cease doing business with each other or with any other employer or person.

(c) Threatening, coercing, or restraining Hunts Point Electrical Wiring Service, Inc., Lerner Shops, Inc., and Telecom of Downstate New York, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other employer or person, to cease doing business with each other or with any other employer or person.

295, 310 (1978); *Electrical Workers IBEW Local 3 (Eastern States Electrical)*, 205 NLRB 270 (1973); *Electrical Workers IBEW Local 3 (Ericsson Telecommunications)*, 257 NLRB 1358 (1981).

<sup>19</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>17</sup> 257 NLRB at 1373.

<sup>18</sup> *Electrical Workers IBEW Local 3 (General Dynamics)*, 264 NLRB 705, 711 (1982); *Service Employees Local 73 (Andy Frain, Inc.)*, 239 NLRB

(d) Applying its bylaws in such a manner as to induce or encourage any member employed by Telecom of Downstate New York, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lerner Shops, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease doing business with Hunts Point Electrical Wiring Service, Inc.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Post in conspicuous places at its business offices, meeting halls and all places where notices to members are customarily posted copies of the attached notice marked "Appendix."<sup>20</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in the places indicated. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Publish the complete text of the notice set out in the Appendix hereto in a conspicuous place in any publication which it mails regularly to its members, and mail a copy of said publication containing the notice to each member of Local 3.

(c) Publish at its own expense a summary of the terms of the notice in a form and size approved by the Regional Director for Region 2 in a daily newspaper of general circulation in the New York metropolitan area. Such publication shall be made on not less than three separate occasions within a period of time, and on such dates within the said period, as shall be designated by the Regional Director.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>20</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

To all members of Local 3, International Brotherhood of Electrical Workers, AFL-CIO, and Employees of Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc.

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the

National Labor Relations Act and has ordered us to post this notice.

WE WILL NOT induce or encourage individuals employed by Telecom of Downstate New York, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of their employment to perform any services, where an object thereof is to force or require Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other employer or person, to cease doing business with each other or with any other employer or person.

WE WILL NOT threaten, coerce, or restrain Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other employer or person, to cease doing business with each other or with any other employer or person.

WE WILL NOT picket or cause to be picketed any job-site at which Hunts Point Electrical Wiring Service, Inc. is engaged in work, or otherwise threaten, coerce, or restrain Hunts Point Electrical Wiring Service, Inc., or any other employer or person, in order to force Hunts Point Electrical Wiring Service, Inc. to recognize or bargain with us as the representative of its employees or to force its employees to accept or select us as their collective-bargaining representative, at any time that Hunts Point Electrical Wiring Service, Inc. has lawfully recognized another labor organization and a question concerning representation may not lawfully be raised.

WE WILL NOT apply our bylaws in such a manner as to induce or encourage any member employed by Telecom of Downstate New York, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike, picket, or refusal in the course of his employment to perform any services, or in such a manner as to restrain or coerce Lerner Shops, Inc., Telecom of Downstate New York, Inc., and Hunts Point Electrical Wiring Service, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Lerner Shops, Inc., or any other person engaged in commerce or in an industry affecting commerce, to cease doing business with Hunts Point Electrical Wiring Service, Inc.

We hereby notify each of our members that no provision of our bylaws is intended to suggest or require that any member refuse, in the course of his employment, to perform any services because work falling within our jurisdiction is being performed by members of another labor organization not in the employ of the member's own employer or over whom he has no control.

LOCAL 3, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO